

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
Criminal No. 07-354(1)(DSD/FLN)

United States of America,

Plaintiff,

v.

**ORDER**

Dempsey Antonio Brown,

Defendant.

This matter is before the court upon the pro se motion by defendant Dempsey Antonio Brown to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255.

This is the second such motion filed by Brown. On May 10, 2010, the court granted his previous § 2255 motion and subsequently lowered his sentence. ECF Nos. 63, 67. On March 21, 2017, Brown filed the instant motion seeking additional relief under § 2255. ECF No. 85. The court ordered him to file a petition with the Eighth Circuit Court of Appeals requesting permission to file a successive habeas petition. ECF No. 88. Brown did so, and the Eighth Circuit recently denied his request. See Brown v. United States, No. 17-1940 (8th Cir. filed Oct. 24, 2017).

Under federal law, a "claim presented in a second or successive habeas corpus petition ... that was presented in a prior application shall be dismissed," unless the applicant can show that the claim relies on a new and retroactive rule of constitutional law or newly discovered facts. 28 U.S.C. § 2244(b). "[F]ederal

prisoners may not file second or successive § 2255 motions without an appropriate certification from the circuit court." Boykin v. United States, 242 F.3d 373, at \*1 (8th Cir. 2000) (per curiam) (citations and internal quotation marks omitted).

Because the Eighth Circuit denied Brown's petition to file a successive motion under § 2255, the court lacks jurisdiction to hear his motion.

Accordingly, based on the above, **IT IS HEREBY ORDERED** that:

1. The motion to vacate, set aside, or correct sentence is denied [ECF No. 85]; and
2. The case is dismissed with prejudice.

**LET JUDGMENT BE ENTERED ACCORDINGLY.**

Dated: October 26, 2017

s/David S. Doty  
David S. Doty, Judge  
United States District Court